

50 CFR Part 17**Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Florida Scrub Jay****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The Florida scrub jay (*Aphelocoma coerulescens*) is almost exclusively confined to scrub habitat in peninsular Florida that generally has high real estate value. Much of the coastal scrub formerly inhabited by the bird has been cleared for beachfront hotels, houses, and condominiums. Many areas in the interior of Florida are presently being developed for citrus groves and housing. Clearly, the major cause of decline has been habitat destruction. Other threats to the Florida scrub jay are malicious shooting of the birds by vandals, accidents with motor vehicles and unfavorable habitat succession problems in some areas. This proposal, if made final would implement the protection and recovery provisions of the Endangered Species Act of 1973, as amended, for the Florida scrub jay. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by July 21, 1986. Public hearing requests must be received by July 7, 1986 at the office listed in the next paragraph.

ADDRESS: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at the above address (telephone 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:**Background**

The Florida scrub jay (*Aphelocoma coerulescens*) was originally named by Bosc, 1795, as *Corvus coerulescens*. The species *Aphelocoma coerulescens* is widely distributed in the western United States, but the Florida Subspecies, *Aphelocoma coerulescens coerulescens*, an isolated form of the species, is restricted to scrub habitat areas of peninsular Florida. The Florida scrub jay is a 30 centimeter (12 inch), bluish-colored, crestless jay totally lacking the white-tipped wings and tail feathers of the more common and widespread blue jay (*Cyanocitta cristata*). A necklace of blue feathers separates the white throat from the gray underparts, and a white line over the eye often blends into a whitish forehead. The tail is long and loose in appearance (Woelfenden in Kale 1978). The subspecies has been recorded only once from outside of peninsular Florida, on Jekyll Island, Georgia, (Moore 1975).

The following information on the biology of the Florida scrub jay is abstracted from information obtained by Cox (1984) and Woelfenden and Fitzpatrick (1984). Scrub jays are long-lived (10 years or more), sedentary,

permanently monogamous inhabitants of oak scrub. They typically nest at the edge of an oak thicket, near an open area. Scrub jays rarely breed at one year of age, even though they are then physiologically mature; instead they may remain on their natal territories for a number of years and assist their parents in raising further broods. Scrub jay breeding pairs with helpers have significantly greater reproductive success than pairs without helpers. Males may remain with their parents as helpers for longer periods than females (up to six years). As the group's size increases, the territory grows. Eventually, a male helper may be able to claim part of the enlarged territory for his own breeding territory. Females rarely help for more than two years, and disperse within the local population as breeding vacancies arise. Scrub jays are omnivorous, eating almost anything they can catch, but they concentrate on lizards and arthropods in spring and summer, and acorns in fall and winter. Surplus acorns are frequently cached in the ground.

The Florida scrub jay lives only in the Florida scrub habitat, which occurs on fine, white, excessively drained sands. This type of sand occurs along present coastlines in Florida, and in dunes deposited during the past when sea levels were much higher than at present. The most important of these dune systems include the Atlantic coastal ridge along the Atlantic coast of Florida, the Lake Wales Ridge in Polk and Highlands Counties, and the extensive sand dunes of Ocala National Forest. Cox (1984) stated that the most commonly occupied type of scrub by scrub jays is "oak scrub." Oak scrub consists of a single layer of evergreen shrubs, usually dominated by three species of oaks—myrtle oak (*Quercus*

myrtifolia), and live oak (*Quercus geminata*), and Chapman oak (*Quercus chapmanii*). Scrub jays are rarely found as residents in habitat with more than 50% canopy cover that is over 3 meters (10 feet) tall. In summary, scrub jay habitat consists of dense thickets of scrub oaks less than 3 meters in height, interspersed with bare sand for foraging and storing acorns.

Scrub jays have been reported in the past from scrub habitat in each of the following Florida Counties: Alachua, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Dade, De Soto, Dixie, Duval, Flagler, Gilchrist, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Levy, Manatee, Marion, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, and Volusia. Today, scrub jays have been completely eliminated from Broward, Dade, Duval, Pinellas, and St. Johns Counties, and their numbers have decreased drastically in Brevard, Highlands, Orange, Palm Beach, and Seminole Counties. In virtually every county where the species occurs, it is known to have declined in numbers. It has disappeared from fully 40% of the locations from which it was known historically, and the total population has probably dropped by half in the past century (Cox 1984). The major cause of the declines and disappearances is habitat destruction. The total number of Florida scrub jays estimated by Cox to survive in Florida today is between 15,000 and 22,000 birds, of which about 13,000 to 20,000 are on public lands, and about 2,000 or private property.

On March 16, 1984, Jeffrey A. Cox, Florida State Museum, University of Florida, Gainesville, Florida, petitioned the Service to list the Florida scrub jay as a threatened species. Dr. Cox provided a comprehensive report on the status of this species in support of the petition. The service found on May 4, 1984, that the petitioned action may be warranted and published the finding on July 13, 1984 (49 FR 28584). A 12-month finding was made on March 18, 1985, and published on July 18, 1985 (50 FR 24238), that the action requested was warranted but precluded by work on other pending proposals. Publication of this proposed rule constitutes the next and final 12-month finding for the Florida scrub jay, as required under section 4(b)(3)(c)(i) of the Act, that the petitioned action is warranted.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and

regulations promulgated (50 CFR Part 424) to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Florida scrub jay, *Aphelocoma coerulescens coerulescens*, are as follows (abstracted for Cox 1984):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The future of the Florida scrub jay depends on the continued existence of its scrub habitat. Unfortunately most scrub lands are in areas that give them high real estate value. Much of the coastal scrub has been cleared for beachfront hotels, houses, and condominiums. Scrub habitats in the interior of the Florida peninsula are subject to development for citrus groves and housing developments. Scrub jays have disappeared from 40% of the locations where they formerly occurred, and the total population has declined by half in the past 100 years. The major cause of the declines and disappearances is habitat destruction. Although housing and agricultural development has been occurring in Florida for many years, the pace of this development has accelerated since the 1960's. The human population of Florida nearly doubled from 1969 to 1980, from 4.95 million to 9.75 million (Terhune 1982). This trend will continue into the foreseeable future, placing even more pressures on natural habitats. Most of the housing developments that are located in scrub habitats are less than 20 years old. In many developments, scrub jays are barely hanging on, and they will probably disappear in a few years as land-clearing continues. The sites most likely to be destroyed by development in the near future are concentrated in Brevard, Highlands, and Palm Beach Counties. It is possible that no scrub jays will remain in Palm Beach County by 1990 (Cox 1984).

Of the 15,000 to 22,000 scrub jays that may survive in Florida at the present time, over 80% occur in only two general areas: Merritt Island/Cape Canaveral (Brevard County) and Ocala National Forest (Lake, Marion, and Putnam Counties). Elsewhere, only small populations are scattered locally throughout peninsular Florida.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* By far, habitat destruction has played the major role in the decline of the Florida scrub jay. Nevertheless, there is evidence (S.A. Grimes, in litt.)

that, in St. Johns County at least, some scrub jays have been shot by vandals. Grimes has seen people with guns in the area along SR A1A, and a tame scrub jay would present a tempting target to vandals. In addition, the tameness and beauty of the bird make it desirable (although illegal) as a pet, and it is known to have been used for such purposes in the past.

C. *Disease or predation.* Disease and predation are not thought to be factors that have led to the scrub jay's decline.

D. *The inadequacy of existing regulatory mechanisms.* The Florida scrub jay is protected by the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) and by Florida State law (Chapter 39-27, Florida Administrative Code). These laws, however, do not protect the birds from habitat destruction, the major cause of the species' decline in Florida.

E. *Other natural or manmade factors affecting its continued existence.* Human interference with the natural functioning and development of an ecosystem has played an important part in the decline of the scrub jay in certain areas. Historically, fires caused by lightning were major factors in maintaining the sparse, low scrub vegetation preferred by the scrub jay. In some parts of the range of this species, human efforts to prevent and/or control natural fires have allowed the scrub to become too dense and tall to support populations of scrub jays. An example of such a situation is found in the miles of coastal barrier scrub in St. Johns County. Scrub jays were known to be resident in this area in the past, but none currently occur there. Fire suppression to protect human interests has allowed the scrub to become too dense for the scrub jays. Thus, a large area of coastal St. Johns County, which used to support a healthy population of the species, no longer contains suitable habitat.

Cox (1984) believes that, in St. Johns County at least, one of the factors in the extirpation of the scrub jay may have been accidental road kills from passing trucks and cars. Scrub jays frequently forage along roadsides and other openings in the scrub, and, since SR A1A runs directly down the middle of the scrub on the long, narrow, barrier island, there was a high potential for birds to be killed in this manner.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Florida scrub jay as a threatened species.

Threatened rather than endangered status was chosen for the following reasons. A high percentage of scrub jays occur on Federal lands that can be managed to benefit the birds. On the other hand, the facts that the birds no longer occurs at 40% of the localities where it once was found and has decreased in numbers by at least 50% in the past century, indicate that it is extremely vulnerable, and could become an endangered species unless surviving populations are protected and managed. Critical habitat is not being proposed for the Florida scrub jay for reasons discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Florida scrub jay at this time. All concerned Federal agencies already know of the presence of the scrub jay on lands they manage, and are aware of the habitat needs of the bird. In addition, the Federal lands involved cover extensive areas, not all of which will be, or will remain, critical over extended periods of time. As scrub habitat is burned or clear-cut in some areas, scrub jay populations will move into other areas with more suitable habitat. As the burned or clear-cut areas grow back, jays will reinvade them. Thus, there is, and will continue to be, a periodic change in localities within the Federal lands occupied by the birds. It is impossible to predict when or where populations will be in residence at any particular time.

The rest of the populations of scrub jays (20% of the estimated total number of birds) are widely and thinly scattered over peninsular Florida in many small localities which would be nearly impossible to delineate in a meaningful or productive fashion. In addition, the tameness and beauty of the scrub jay make it a desirable bird for collectors. Although it is illegal to capture and hold the bird in captivity, such practices do occur. Finally the tameness and trusting nature of this species make it particularly vulnerable to malicious or random shooting. To point out precisely where the few remaining birds on private land occur, through a delineation of critical habitat and publication of locality maps, could enhance the possibility of such vandalism, and thus actually increase the threat to the species. For all of the above reasons, a

prudent for the Florida scrub jay, either on Federal lands or on private lands.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

At the present time, the Service knows, of four Federal agencies that may be affected if the scrub jay is listed as a threatened species. These are: (1) The U.S. Fish and Wildlife Service (Merritt Island National Wildlife Refuge), (2) the National Aeronautics and Space Administration (Kennedy Space Center), (3) the U.S. Air Force (Cape Canaveral Air Force Station), and (4) the U.S. Forest Service (Ocala National Forest). Impacts on these agencies, however, are expected to be minimal, and may be summarized as

Merritt Island National Wildlife Refuge/Kennedy Space Center—The largest population of scrub jays occurs in this area; the Refuge includes the lands of the Kennedy Space Center. The Refuge has begun a program of controlling burning of all scrub on land under its jurisdiction. Unless the burnin occurs too often, it should help to maintain the suitability of habitat for scrub jays. The Refuge will now need to take the interests of the scrub jay into consideration in its program of controlling burning of scrub. In addition any expansion of Kennedy Space Center facilities will also need to consider the needs of the scrub jay before being undertaken.

Cape Canaveral Air Force Station—The scrub at this Station has suffered more clearing than at the Merritt Island National Wildlife Refuge. Aerial photos disclose that about 20% of the land on the Station has been cleared in the past several decades. Habitat clearing for construction in the future will need to consider the effect of such clearing on scrub jay populations before being undertaken. Also, it may be necessary to cut or burn existing scrub periodically to maintain its suitability as habitat for the scrub jay.

Ocala National Forest—The scrub jay population is scattered throughout the scrub portions of the Forest. The Forest Service clear-cuts on a rotational basis. This can have a beneficial effect on the scrub jays because it provides a continually changing mosaic of habitat within the forest. When scrub in one area becomes too old and dense, scrub jays may move on to colonize another more recently cleared site. Therefore, present Forest Service management practices seem compatible with the well-being of the scrub jay, and only minimal effect on this agency is anticipated.

The Act and implementing regulation found at 50 CFR 17.21 and 17.31 set for a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under

governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Since the jay is already protected under the Migratory Bird Act, no economic hardship applications are expected.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on the Florida scrub jay will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

National Environmental Policy Act

The Fish and Wildlife has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1984 (48 FR 49244).

References Cited

- Cox, J.A. 1984. Conservation and ecology of the Florida scrub jay. Unpublished Dissertation. Department of Zoology, University of Florida. 185 pp.
Kale, H.W., II. 1978. Rare and endangered biota of Florida. Vol. II. Birds. University of Florida Presses, Gainesville. 121 pp.
Moore, T.S. 1975. First modern record of the scrub jay in Georgia. *Oriole*, 40:1-2.

Terhune, F.W., ed. 1982. Florida statistical abstract. University of Florida Presses, Gainesville.

Woollenden, G.E., and J.W. Fitzpatrick. 1984. The Florida scrub jay. Monographs in Population Biology No. 30, Princeton University Press. 406 pp.

Author

The primary author of this proposed rule is John L. Paradiso, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (telephone 904/791-2580 or FTS 946-2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened Wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

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(h) * * *

Species				Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name		Scientific name							
BIRDS									
Jay	Florida scrub	Aphelocoma	coerulescens	coer.	U.S.A. (FL)	Entire	T		NA
		ulescens.							NA

Dated: May 6, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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